

STATE OF TENNESSEE

Office of the Attorney General



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September 27, 2002

Chairman Sara Kyle  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243

**RE: IN RE: UNITED CITIES GAS COMPANY, a Division of ATMOS ENERGY  
CORPORATION INCENTIVE PLAN ACCOUNT (IPA) AUDIT  
Docket No.: 01-00704**

Dear Chairman Kyle:

Enclosed is an original and fourteen copies of the Office of the Attorney General's Supplemental Memorandum of Law in Support of Motion to Compel Answers to the Attorney General's First Set of Interrogatories, Requests for Production of Documents & Things and Requests for Admission. We request that these documents be filed with the TRA in this docket. Please be advised that all parties of record have been served copies of these documents. If you have any questions, kindly contact me at (615) 532-3382. Thank you very much.

Sincerely,

A handwritten signature in cursive script that reads "Shilina B. Chatterjee".

Shilina B. Chatterjee  
Assistant Attorney General

Enclosures

58708

**IN THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

<b>IN RE:</b>	<b>) DOCKET NO. 01-00704</b>
	<b>)</b>
<b>UNITED CITIES GAS COMPANY, a</b>	<b>)</b>
<b>Division of ATMOS ENERGY</b>	<b>)</b>
<b>CORPORATION INCENTIVE PLAN</b>	<b>)</b>
<b>ACCOUNT (IPA) AUDIT</b>	<b>)</b>

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**SUPPLEMENTAL MEMORANDUM OF LAW IN SUPPORT OF MOTION TO  
COMPEL ANSWERS TO ATTORNEY GENERAL'S FIRST SET OF  
INTERROGATORIES, REQUESTS FOR PRODUCTION OF DOCUMENTS &  
THINGS AND REQUESTS FOR ADMISSION SERVED UPON UNITED  
CITIES GAS COMPANY**

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The Tennessee Office of the Attorney General, through the Consumer Advocate & Protection Division ("Attorney General"), submitted a Motion and Memorandum of Law in Support thereof to compel answers by United Cities Gas Company ("UCG") of the Attorney General's First Set of Interrogatories, Requests for Production of Documents & Things and Requests for Admission requesting that the Tennessee Regulatory Authority ("TRA") enter an Order compelling full and complete discovery in the above referenced matter. This Supplemental Memorandum of Law is offered in further support of that Motion.

**FACTS**

UCG was served with Attorney General's First Set of Interrogatories, Requests for Production of Documents & Things and Requests for Admission to United Cities Gas Company,

which were served on UCG on September 4, 2002. On September 19, 2002, Joe Conner, attorney for UCG contacted Russell T. Perkins, Deputy Attorney General of the Consumer Advocate & Protection Division and requested a one day extension of time to serve responses to the Attorney General's First Set of Interrogatories, Requests for Production of Documents & Things and Requests for Admission. Mr. Perkins granted Mr. Conner a one day extension of time. On Friday, September 20, 2002 CST at 4:49 p.m., Joe Conner sent an unsigned draft response to Russell T. Perkins by electronic mail. Also, Mr. Conner failed to file the draft response with the TRA by the deadline of 2:00 p.m. CST on September 20, 2002<sup>1</sup> as required by the scheduling order issued on August 29, 2002 by the Hearing Officer. On September 24, 2002 at 3:52 p.m. CST, UCG filed their responses with the TRA and thereafter, properly effectuated service upon the Attorney General.

### LAW

UCG failed to respond to the Attorney General's First Set of Interrogatories, Requests for Production of Documents & Things and Requests for Admission in a timely manner pursuant to pretrial procedure. TRA Rule 1220-1-2.11 provides that discovery in contested cases before the TRA are to be "effectuated in accordance with the Tennessee Rules of Civil Procedure." Tennessee Rule of Civil Procedure 33.01 provides that objections to interrogatories must be timely and provides that answers, and objections, if any shall be served within 30 days after service unless the court allows a shorter or longer time. In the instant matter, the Hearing Officer issued a scheduling order that required UCG to respond by 2:00 p.m. CST on September 19, 2002. UCG obtained consent from the Attorney General for a one day extension of time to

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<sup>1</sup> The deadline established by the scheduling order is September 19, 2002.

respond to the Attorney General's First Set of Interrogatories, Requests for Production of Documents & Things and Requests for Admission from the Attorney General. Therefore, UCG was required to respond by 2:00 p.m. CST on September 20, 2002. UCG failed to respond by this deadline. Instead, UCG responded at 3:52 CST on September 24, 2002, four days past the due date of the response. Therefore, UCG's responses are untimely and appropriate sanctions should be imposed.

The Responses to the Attorney General's First Set of Interrogatories, Requests for Production of Documents & Things and Requests for Admissions that UCG sent to the Attorney General via electronic mail on September 24, 2002 were not signed and were not properly served. Rule 26.07 states:

[e]very request for discovery or responses or objection thereto made by a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name whose address shall be stated. The signature of the attorney constitutes a certification that the attorney or party has read the response request or objection "and that to the best of the person's knowledge, information and belief formed after a reasonable inquiry it is (1) consistent with these rules and warranted by existing law or a good faith argument for extension modification or reversal of existing law; (2) not interposed for any improper purpose such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (3) not unreasonably or unduly burdensome or expensive, given the needs of the case, the amount in controversy and the importance of the issues at stake in the litigation. If a request, response or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response or objection and a party shall not be obligated to take any action with respect to it until it is signed.<sup>2</sup>

Additionally, the Tennessee Rules of Civil Procedure provide that when responses to

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<sup>2</sup> TENN. R. CIV. P. 26.07

interrogatories are not served within the time limit, any objections are waived. Objections to interrogatories are waived if not served within the time limit of Rule 33.01. *Sammons v. Rotroff*, 653 S.W.2d 740, 742 (Tenn. Ct. App. 1995). The objections to interrogatories filed by UCG are waived since they were not served within the time limit. Further, pursuant to Tennessee Rules of Civil Procedure 36.01 all requests for admission are deemed admitted if the party fails to timely respond. UCG's entire approach to the requests to admit is faulty and not consistent with the Tennessee Rules of Civil Procedure.

Furthermore, the response by UCG is flawed in several respects. The response and therefore, the objections were untimely filed and untimely served. More importantly, the responses reflect an approach by UCG, which in a practical sense leads to incomplete and evasive responses to the Attorney General's discovery request. Some of these concerns are quite obvious. UCG's reliance on the overused objection that a request is "vague, overly broad and unduly burdensome" is improper where the objection does not specifically relate the specifics supporting the objection. A request is not "vague or overly broad" if it is understandable. Given the mound of testimony provided to the TRA, a good portion of which is testimony from UCG's witnesses, the terms used in each of the requests are known to UCG. The requests are artfully drawn.

UCG's objections are interposed as a dodge. There are obviously issues addressed in the requests that UCG would rather not deal with in this matter. It's possible that the deadline for responding to these requests simply crept up on UCG because of other matters. However, this is no excuse nor reason for UCG to be able to get by with evasive and incomplete answers.

UCG has apparently relied only on the knowledge of only two (2) individuals in

responding to the Request. In response to Interrogatory #1, UCG lists only its lawyer and Pat Childers as having contributed to information to the construction of the response. UCG's objection to the Attorney General's definition of "you" and "your" suggests that this is a planned approach. UCG's objection to the definition of "you" and "your" is also an indication that the natural sources and resources relied upon in responding to such interrogatories were not consulted. UCG clearly attempts to limit the participation of representatives from its parent company and representatives of UCG. UCG is not permitted under the Tennessee Rules of Civil Procedure to limit the universe of knowledge necessary to properly answer these requests thereby excluding pertinent information and analysis. The fact that Frank Creamer did not participate in UCG's review is a glaring problem. Failure to consult the individual UCG has identified as a "expert" is a significant sign of evasion. These requests are of such nature that participation by any claimed "expert" is vital. This is a strategic choice on the part of UCG, for which there are obvious consequences set out in the law regarding discovery. The deficiency of this approach impacts all the individual requests, except the requests to admit for which UCG has actually admitted the fact or issue. Although the Attorney General addresses some specific requests, UCG should be required to properly respond to all the individual requests<sup>3</sup> after consultation with all appropriate resources.

UCG has obviously not followed the definitions and instructions contained within the Attorney General's requests. There is nothing in these definitions and instructions which impose a greater obligation on UCG than allowed under the Tennessee Rules of Civil Procedure. The definitions and instructions are intended to add direction and specifics, and thus assist in

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<sup>3</sup> Except the request to admit admitted by UCG.

narrowing the requests.

Additionally, the Attorney General requests that the hearing officer consider these specific problems associated with UCG's response to the data request:

Interrogatory #1: This paragraph will necessarily be supplemented after UCG consults with the appropriate sources in responding to the Attorney General's discovery request.

Interrogatory #2: It is difficult to envision a situation where an interrogatory which simply seeks the identity of individuals with discoverable knowledge of information would be considered objectionable. In fact, this interrogatory is a staple in all carefully designed sets of discovery. This interrogatory is very basic and designed to identify for a party the specific individuals it might need to interview or depose. The interrogatory seeks a list that is important for the sources of information that may support either side of a dispute. The interrogatory does not seek a witness list. However, there are clear sanctions described in the law for UCG's attempt to limit its response to this interrogatory. *Strickland v. Strickland*, 618 S.W.2d 496 (Tenn. App. 1981).

Interrogatory #3: Again, UCG has side-stepped the actual intent of the interrogatory. The interrogatory seeks the substance of the statements made by the representatives of the Tennessee Regulatory Authority ("TRA"). UCG notes that the meeting was not recorded, but fails to provide a description of the incident statements. Additionally, UCG fails to respond to the interrogatory asking whether or not there were notes taken at the meeting and the present location of such notes.

Interrogatory #4: This is rather late in the game for UCG to notify the parties that its expert witness has cold feet. An obvious, unfair prejudice results against the Attorney General

and the Tennessee Regulatory Authority staff should UCG be allowed to hide the opinion of its expert witness. Incident to this is the obvious conclusion that such expert testimony is extraneous to the issues involved. Simply put, this matter can be decided and should be decided based on the record, orders, and tariff filing related to TRA Docket No. 97-01364. Frank Creamer should be excluded as a witness.

Interrogatory #7: UCG has obviously not satisfied this interrogatory in that it has not identified the Federal Energy Regulatory Commission ("FERC") dockets involved, nor provided the documents requested.

Interrogatory #8: United Cites Gas responds to an interrogatory seeking copies of documents "pertaining" to the criteria it and Atmos uses in determining whether or not to intervene in FERC filings. UCG notes that there are no such documents which specify the criteria, however, the interrogatory clearly seeks any document that pertains to the criteria. It is not necessary that these documents specify the criteria.

Interrogatory #9: Attached hereto as Exhibit A is a copy of the transcript from TRA Docket No. 97-01363 in which the witnesses involved in that matter specifically use the term "gas procurement incentive mechanism." It is disingenuous to suggest that this term does not carry a readily ascertainable meaning. Further, the interrogatory expressly excludes from its search any material protected by attorney-client privilege. UCG interrogatory response appears to group within that privilege information and material such as minutes of the board of directors and generally other documents which are not protected by the attorney-client privilege. It is not enough to object to an interrogatory because some of the information sought may be protected by the attorney-client privilege. A party is no less under a clear obligation to turn over the material



which is not protected by the attorney-client privilege.

Interrogatory #11: UCG's objection that this interrogatory is "overly broad, vague, unduly burdensome and contains undefined terms" is without explanation. The interrogatory is actually quite clear with respect to the information sought. Furthermore, as discussed earlier herein, the phrase "gas procurement incentive mechanism" has a readily ascertainable definition.

Interrogatory #12: As discussed in the Attorney General's original Motion To Compel, the word "pipeline" is not quite as mysterious as UCG suggests. Further, UCG's response to the interrogatory is without consequence and merely rephrases the interrogatory.

Interrogatory #14: The information sought is obviously that information transferred from UCG or Atmos to one or all of the pipelines it deals with. The interrogatory does not seek the information contained exclusively within the PBR. Again, UCG's attempt to side-step the interrogatory by declaring that the word "pipeline" and the phrase "gas procurement incentive mechanism" are too difficult to understand is evasive and leaves the interrogatory response incomplete.

Interrogatory #16: This interrogatory very simply and quite directly ask for the parameters of consideration extended to the pipeline by UCG or Atmos. Black's Law Dictionary clearly defines *quid pro quo* as "nothing more than mutual consideration that passes between parties through a contract, which renders it valid and binding." While UCG focuses on the phrase *quid pro quo*, the intent of the interrogatory is quite clear. The interrogatory seeks to determine the extent of consideration extended by UCG or Atmos to the pipeline involved. UCG should focus on the concept of "any other consideration" in responding. UCG cannot simply pick out a word or phrase, fuss about its meaning and then refuse to answer a properly drawn request based on an

invented difficulty with the request. This is particularly true where the request is clearly focused and offers alternative language such as set out in the subject request.

Interrogatory #17: The reasons for the deficiency with respect to UCG's response to this interrogatory are similar to that discussed in the preceding paragraph.

Interrogatory #18: It is refreshing to see a natural gas utility refer to an incentive program as a hypothetical. However, this interrogatory is much more straight forward than a hypothetical and clearly seeks information concerning a fact which is known by UCG and Atmos. A likely answer to the interrogatory is simple that there is no such incentive. However, it is no less identifiable. Nor is the answer a mere hypothetical solution.

Interrogatory #20: UCG simply has refused to answer this interrogatory. The interrogatory is straight forward and seeks pertinent information supporting UCG's choice to refuse to admit the intended request to admit. This is simply evasive on the part of UCG.

With respect to the remaining Request for Production of Documents and Things, UCG has not supplied the items requested. Given the timetable set out in the scheduling order this material should have been produced no later than 2:00 PM CST on September 20, 2002.

The Attorney General's Office has communicated via e-mail with UCG and requested that UCG notify us when the production would be forthcoming, however, counsel for UCG has not responded. As a consequence, it is difficult to respond to the production of UCG in this Motion To Compel, since the Attorney General's Office does not have the documents which UCG anticipates producing it is difficult to respond to the deficiency of the production.

However, with respect to Request for Production #2, the request is definitely not vague. UCG wants to claim that it is unduly broad or unduly burdensome, however given the responses to the

interrogatories and the fact that only Pat Childers and legal counsel for UCG participated in the preparation of the responses, then production of the documents requested would not be overly broad nor unduly burdensome.

With respect to the Request for Production #3, Mr. Creamer's testimony should be excluded.

UCG's response to Request for Production #4 is disingenuous. The interrogatory is not vague. It clearly seeks copies of any statements UCG relies on. It is not overly broad nor unduly burdensome since it is unlikely that any such document exists. However to the extent it does exist, the production should be quite simple and inexpensive. UCG's latching on the word "lawsuit" is not proper. Given the quasi-judicial nature of the TRA, the use of the word "lawsuit" is not out of step with the character and nature of these proceedings. More importantly, it is clear that the request for production has properly identified the matter to which UCG should direct its inquiry. UCG admits as much in the response.

With respect to the Request to Production #5, UCG's objection is groundless. The interrogatory is not vague in that it clearly describes the items sought. The request is not overly broad nor unduly burdensome since most of the production has been complied with to the extent that UCG simply refers to the documents as already produced. Consequently, in its response UCG should have supplied other items which it may be used as proof in this matter or that may lead to the discovery of admissible evidence by any party to this proceeding. To the extent there are no other items, UCG should be required to notify the TRA and the Attorney General of that fact.

With respect to Request to Admit #8, the objection by UCG is improper. UCG is

required either admit or deny this request to admit. To the extent it feels it needs to explain its answer, UCG is permitted to do so. However, UCG's obligation is to review the information it has referenced and draw its conclusion with respect to the request to admit is clear under Rule 36 of the Tennessee Rules of Civil Procedure.

Again, UCG simply side-steps its obligation to admit or deny a rather simple request to admit in its response to Request to Admit #9. If there exists indices used to calculate transportation costs which do not account for the effects of market-driven pipeline transportation rates, UCG may deny this request. However if there are no such indices, then clearly UCG is left only with the option of admitting this rather obvious statement.

With respect to Requests to Admit #10, #11, #14, #15, #16, #18, and #19, UCG confuses an objection with its obligation to admit or deny these requests to admit. The objection necessarily must be related to the request as submitted. Instances where UCG disagrees with a certain phrasing may result in its attempt to qualify its admission. However, UCG is still under the obligation either to admit or deny the request. An example of this problem is found with respect to UCG's response to Request to Admit #18. UCG can not merely latch on to the phrase of "alleged savings" to deflect its obligation to admit or deny the request. Put simply, if UCG wants to argue that the savings were actually realized, it must then indicate as an admission whether or not the "savings" for the 2000-2001 plan year were included calculated in the same manner as UCG calculated the "savings" in the first full year of the approved permanent plan.

Lastly, the Attorney General reiterates that discovery is essential in this type of proceeding and it serves to provide information necessary for hearing. Further, a party seeking discovery is entitled to obtain information from the parties about "any matter, not privileged,

which is relevant to the subject matter involved in the pending action whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party.”<sup>4</sup>

Therefore, the Attorney General requests that the TRA enter an Order waiving UCG’s objections and compelling UCG to supply full and complete answers to the discovery requests as well as all other appropriate sanctions including, but not limited to, the exclusion of witnesses.

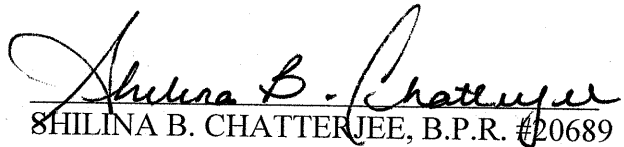
### **CONCLUSION**

For the reasons provided in the Attorney General’s Motion to Compel and further detailed herein, we respectfully request that the TRA enter an Order waiving UCG’s objections and ordering UCG to provide full and complete responses to the remaining discovery requests. Additionally, due to the failure of UCG to respond in a timely manner, the ratepayers continue to suffer on extreme prejudice. The Attorney General requests the TRA to consider all other appropriate sanctions, including dismissal of UCG’s objections and/or exclusion of witnesses not timely identified and/or expert witnesses to which expert witness interrogatory responses have not been supplied.

RESPECTFULLY SUBMITTED,



TIMOTHY C. PHILLIPS, B.P.R. #12751  
Assistant Attorney General  
Office of the Attorney General  
Consumer Advocate and Protection Division  
(615) 741-3533



SHILINA B. CHATTERJEE, B.P.R. #20689

Assistant Attorney General

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Dated: September 27, 2002

## CERTIFICATE OF SERVICE

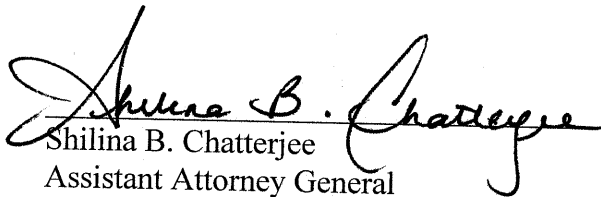
I hereby certify that a true and correct copy of the foregoing was served via facsimile and U.S. Mail on September 27, 2002.

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Shilina B. Chatterjee  
Assistant Attorney General

58649

By UCG Atty Flaherty:

Volume	Page	Line	Text
2	377	11	BY MR. FLAHERTY:
2	377	12	Q. Mr. McCormac, let me run through with you
2	377	13	just a couple more examples. I've written the next
2	377	14	example up on the board. You can see that my mine is
2	377	15	not as good as Mr. Williams' handwriting.
2	377	16	Let's assume in this example that you and
2	377	17	Dr. Brown worked for the Consumer Advocate in 1994.
2	377	18	Do you see that? Do you see that in the example?
2	377	19	A. Yes.
2	377	20	Q. And you worked really hard saving
2	377	21	Tennessee consumers money in 1994, missing a lot of
2	377	22	your son's baseball games on the weekends, and you
2	377	23	worked and testified in 20 cases. You see I've got
2	377	24	the 20 under your name in 1994?
2	377	25	A. Okay.
2	377		
2	377		NASHVILLE COURT REPORTERS (615)885-5798
2	378	1	Q. And Dr. Brown also worked hard saving
2	378	2	Tennessee consumers money but not as hard as you, and
2	378	3	he got to watch his kids play ball on the weekends and
2	378	4	he testified in only ten cases in 1994. Do you see
2	378	5	that?
2	378	6	A. Yes.
2	378	7	Q. And before 1995 starts, your boss, who I'm
2	378	8	assuming is the Attorney General, comes to you and Dr.
2	378	9	Brown and says, I'm putting you on an incentive
2	378	10	program and it's going to go based upon a historical
2	378	11	incentive basis. Do you understand that part of the
2	378	12	assumption?
2	378	13	A. Yes.
2	378	14	Q. And if you work on more cases this year
2	378	15	than you did last year, you will be paid a bonus. If
2	378	16	you work on less cases this year than you did last
2	378	17	year, your pay will be docked. Do you understand
2	378	18	that?
2	378	19	A. Yes.
2	378	20	Q. And he goes on to tell you that, quote,
2	378	21	for this incentive plan to be equitable and produce a
2	378	22	benefit for customers of Tennessee, I must use an

377

EXHIBIT

A



2	378	23	index that matches the annual number of cases you
2	378	24	testified in before the incentive plan began. If I
2	378	25	didn't use what you did last year as the index, you
2	378		
2	378		NASHVILLE COURT REPORTERS (615)885-5798
2	379	1	would be rewarded even though you didn't do as well as
2	379	2	you did last year, end quote. Do you understand that
2	379	3	part of the assumption?
2	379	4	A. Yes.
2	379	5	Q. In 1995 Dr. Brown's glad he didn't work as
2	379	6	hard as he did in 1994 and works on 15 cases in 1995
2	379	7	but working an extra day here and there. Do you
2	379	8	understand that?
2	379	9	A. Yes.
2	379	10	Q. And you try as hard as you did in 1994,
2	379	11	but working every other weekend, you're only able to
2	379	12	work on 18 cases in 1995. Do you understand that?
2	379	13	A. Yes.
2	379	14	Q. At the end of the year, Dr. Brown is happy
2	379	15	because he gets paid a bonus. And you're not happy;
2	379	16	in fact, you're pretty mad. Because even though you
2	379	17	worked on more cases than Dr. Brown, under the
2	379	18	Attorney General's incentive plan, you get penalized.
2	379	19	Do you understand that?
2	379	20	A. Yes.
2	379	21	Q. In this sense or under this hypothetical,
2	379	22	would you agree that your boss' historical incentive
2	379	23	plan penalizes you for historically performing well
2	379	24	and promotes Dr. Brown, who historically performed
2	379	25	below your performance?
2	379		

378

2	379		NASHVILLE COURT REPORTERS (615)885-5798
2	380	1	A. Assuming all of the cases were equal, yes.
2	380	2	Q. Before we leave this example, let me use
2	380	3	another one with you and Dr. Brown. Let's say you
2	380	4	have your attorneys, Mr. Williams and Mr. Broemel,
2	380	5	your assistants, their law clerks, your secretary, and
2	380	6	the Attorney General all assisting you and Dr. Brown
2	380	7	in preparing and presenting your testimony and
2	380	8	exhibits.
2	380	9	But because you and Dr. Brown are the only

379

2 380 10 ones that testified, you get all the glory and bonuses  
 2 380 11 under your boss' incentive plan. Do you understand  
 2 380 12 that part of the hypothetical?  
 2 380 13 A. I think so.  
 2 380 14 Q. Is the fact that you and Dr. Brown get all  
 2 380 15 the glory and the money and all these other people who  
 2 380 16 assist you in doing that, your attorneys, your  
 2 380 17 secretaries, because they aren't the ones out front  
 2 380 18 doing the testifying, they don't get any bonus or  
 2 380 19 incentive, is that really fair to them, in your  
 2 380 20 opinion?  
 2 380 21 A. I don't know in that hypothetical what  
 2 380 22 other assumptions there are. But if they're  
 2 380 23 supporting us equally, I don't know that it matters if  
 2 380 24 they were supporting both of us.  
 2 380 25 Q. You have people that support you, your  
 2 380

2 380 NASHVILLE COURT REPORTERS (615)885-5798  
 2 381 1 secretary, your attorneys, that allow you to get up  
 2 381 2 there and testify. Would you agree with that?  
 2 381 3 A. They support both of us.  
 2 381 4 Q. Okay. And let's see if I can move this  
 2 381 5 hypothetical into this case. You understand that when  
 2 381 6 somebody goes out and buys gas for a utility company,  
 2 381 7 they have accountants, gas accountants, they have  
 2 381 8 regulatory people that allow them the ability to do  
 2 381 9 what they do. Would you agree with that based upon  
 2 381 10 your knowledge of the gas business?  
 2 381 11 A. They have some support from an overhead  
 2 381 12 perspective. I don't think they have anything to do  
 2 381 13 with gas prices.  
 2 381 14 Q. Let me just use one more example with you  
 2 381 15 and Dr. Brown and your boss' incentive plan. Let's  
 2 381 16 say that you had a few cases that you had begun work  
 2 381 17 on in 1994 but had not completed those in 1994. Do  
 2 381 18 you understand that part of the assumption?  
 2 381 19 A. Yes.  
 2 381 20 Q. And you completed them in 1995. But  
 2 381 21 because the incentive did not go into effect until  
 2 381 22 1995, you were not given credit for those cases. Do  
 2 381 23 you understand that part of the assumption?  
 2 381 24 A. Not given credit in '94?

2	381	25	Q.	You're not given credit for those cases
2	381			
2	381			NASHVILLE COURT REPORTERS (615)885-5798
2	382	1		because they started in 1994, they finished in 1995.
2	382	2		But because of what your boss' incentive plan said,
2	382	3		you weren't going to be given credit for those '94
2	382	4		cases. Do you understand that?
2	382	5	A.	Not really. But -- are you saying if they
2	382	6		were already in progress, they wouldn't count if they
2	382	7		were completed in '95?
2	382	8	Q.	Right.
2	382	9	A.	Okay.
2	382	10	Q.	And you tell your boss that you should get
2	382	11		credit for that work even though that work started
2	382	12		before this incentive plan. Do you understand that
2	382	13		part of the assumption?
2	382	14	A.	Yes.
2	382	15	Q.	Do you have a problem with your boss'
2	382	16		position on that, if you're not given credit for the
2	382	17		cases you were working on before the incentive plan
2	382	18		went into effect?
2	382	19	A.	All other things being equal, yes, I
2	382	20		would.
2	382	21	Q.	And just because you're not getting an
2	382	22		incentive, you're not going to drop those cases,
2	382	23		you're going to do the best you can. Would you agree
2	382	24		with that?
2	382	25	A.	Yes.
2	382			

381

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2	383	1	Q.	And the Tennessee consumers benefit by the
2	383	2		fact that you don't drop those cases just because
2	383	3		you're not getting an incentive. Would you agree with
2	383	4		that?
2	383	5	A.	Yes.
2	383	6	Q.	Let me direct your attention back to page
2	383	78		of your prefiled testimony. Do you have that, sir?
2	383	8	A.	February 20th testimony?
2	383	9	Q.	Yes, direct testimony, page 8. At lines
2	383	10		10 and 11, you talk about reducing the sharing
2	383	11		percentage of the savings or penalty from 50/50 to

382

2	383	12	<b><u>90/10 on the gas procurement incentive mechanism. Do</u></b>
2	383	13	you see that?
2	383	14	A. I see it. Can I read the whole answer to
2	383	15	get the context here? (Witness reviews document.)
2	383	16	Okay.

By UCG Witness Creamer:

Volume	Page	Line	Text
2	508		NASHVILLE COURT REPORTERS (615)885-5798
2	509	1	BY MR. FLAHERTY:
2	509	2	Q. Mr. Creamer, do you have a brief summary
2	509	3	of your direct and rebuttal testimony?
2	509	4	A. Yes. Thank you. I was engaged by United
2	509	5	Cities Gas in 1994 to study PBR alternatives and
2	509	6	develop its experimental PBR program. I testified
2	509	7	before your predecessor. I was subsequently engaged
2	509	8	in 1997 to assist in establishing a permanent plan.
2	509	9	My direct testimony covers the design and
2	509	10	purpose of PBRs generally and two incentive mechanisms
2	509	11	proposed by UCG specifically. The first part of that
2	509	12	testimony defines PBRs, covers our history to date,
2	509	13	and summarizes those gas companies with already
2	509	14	approved PBR subject to benchmark regulation.
2	509	15	Benchmark regulation as opposed to price
2	509	16	caps or other forms of incentive regulation is
2	509	17	preferred in the gas industry since the availability
2	509	18	of market data makes this form of regulation possible.
2	509	19	I included a number of Commission
2	509	20	decisions describing the benefits of benchmark
2	509	21	regulation compared to the then current prudence
2	509	22	review process.
2	509	23	To paraphrase these Commission decisions
2	509	24	in a sentence, by using external benchmarks or indices
2	509	25	in advance provides a clearer and objective market and
2	509		
2	509		NASHVILLE COURT REPORTERS (615)885-5798
2	510	1	regulatory signal, and by aligning both the ratepayer
2	510	2	and shareholder interest through mutual savings,
2	510	3	mutual sharing of performance, a behavior change
2	510	4	occurs at the utility that enables the company to take
2	510	5	effective risks and lower cost and, hence, improve its

2	510	6	earnings as it tries to stay competitive in a rapidly
2	510	7	evolving gas procurement arena.
2	510	8	Recent regulatory changes such as FERC
2	510	9	Order 636 continue to stress the market as more
2	510	10	important in setting prices, and market mechanisms
2	510	11	such as PBRs are needed now to sustain market share,
2	510	12	to retain load factor, and to avoid physical bypass.
2	510	13	I then summarize the two mechanisms that
2	510	14	UCG requested, one for gas procurement and one for
2	510	15	capacity management.
2	510	16	<b><u>The gas procurement incentive mechanism is</u></b>
2	510	17	similar to other gas procurement mechanisms in place
2	510	18	in California and elsewhere. It combines the three
2	510	19	gas incentive mechanisms that were originally proposed
2	510	20	and approved in Tennessee for the experiment. It
2	510	21	provides incentive to ratepayers and shareholders to
2	510	22	invest in efforts to buy gas below the benchmark

By UCG Witness Senter:

Volume	Page	Line	Text
3	571	11	that.
3	571	12	MR. BAUGH: The purpose of
3	571	13	Mr. Senter's testimony is to state the company's
3	571	14	policy in regards to the PBR mechanism. So that's
3	571	15	fine.
3	571	16	CHAIRMAN GREER: So noted. Thank
3	571	17	you.
3	571	19	(Prefiled testimony of Mr. William J. Senter is
3	571	20	inserted into transcript as if read.)
3	571	22	(Balance of this page is left blank intentionally.)
3	571		NASHVILLE COURT REPORTERS (615) 885-5798
3	571		
3	572	1	BY MR. BAUGH:
3	572	2	Q. Mr. Senter, could you please give a brief
3	572	3	summary of your direct and rebuttal testimony?
3	572	4	A. Yes. In January of 1995, United Cities
3	572	5	Gas Company filed for approval of an experimental
3	572	6	performance-based ratemaking mechanism, or PBR, to
3	572	7	provide incentives for the company to take innovative
3	572	8	actions to obtain the lowest cost of gas feasible for
3	572	9	our customers. The company's application outlined a

3	572	10	number of objectives which, if achieved, would produce
3	572	11	shared benefits for the customer and the company.
3	572	12	Following 24 months of experimentation with these
3	572	13	mechanisms, we believe we have successfully
3	572	14	accomplished each of our objectives.
3	572	15	Our purpose in this hearing is to present
3	572	16	the results of our 24-month experiment to show how PBR
3	572	17	produces lower gas cost for ratepayers. My testimony
3	572	18	states results of our experiment in the context of our
3	572	19	objectives. We now propose to this Authority a
3	572	20	permanent program of incentive mechanisms to continue
3	572	21	the benefits achieved during the experimental period.
3	572	22	Did the experimental program work to
3	572	23	produce benefits for ratepayers? Yes. Total gas
3	572	24	costs saved during the first year of the plan were
3	572	25	\$1.5 million. Absent the earnings cap which is not in
3	572		NASHVILLE COURT REPORTERS (615) 885-5798
3	572		

3	573	1	our permanent proposal, customers would still have
3	573	2	saved \$1 million, or 96.5 percent below market.
3	573	3	During the second year of the experiment,
3	573	4	total gas costs saved were \$2.4. Under our permanent
3	573	5	proposal, the customers' share of the savings would
3	573	6	have been \$1.5 million, or 95.5 percent below market.
3	573	7	Combined for the two years, total gas costs saved were
3	573	8	\$3.9 million. Under our permanent proposal, the
3	573	9	customer's share of the savings would have been \$2.5
3	573	10	million over the two years.
3	573	11	These savings were not compared to the
3	573	12	average market price, but were savings compared to a
3	573	13	stricter benchmark standard set at 2 percent below the
3	573	14	average market price. As a shared incentive, the PBR
3	573	15	became the win-win for the customer and the company.
3	573	16	The customer experienced savings because the company
3	573	17	had an incentive to purchase gas below a predetermined
3	573	18	benchmark. It is our belief that the certainty of
3	573	19	performance measurement compels better performance.
3	573	20	Do the results of the experiment show that
3	573	21	our performance-based ratemaking program should be
3	573	22	continued? The answer is yes. Our permanent proposal
3	573	23	<b><u>for gas procurement incentive mechanism and a capacity</u></b>

3	573	24	management incentive mechanism contain similar
3	573	25	incentives which should continue to encourage the
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3	573		

573

3	574	1	company to achieve similar gas cost savings for the
3	574	2	customer.
3	574	3	If we can save our customers money on the
3	574	4	cost of gas, we will be rewarded; if we fail, we will
3	574	5	be penalized. Either way, the company should be
3	574	6	rewarded or penalized based upon its performance.
3	574	7	MR. BAUGH: Mr. Chairman, we would